In re Application of:

GUSTAV GAUDERNACK, ET AL.

Docket No.: 01702.401500

Int'l Appln. No.: PCT/NO99/00143

U.S. Appln No.: 09/674,973

Examiner: M. Borin

Nat'l Entry Date: November 8, 2000

Group Art Unit: 1631

For: PEPTIDES

Date: April 3, 2003

Commissioner for Patents
Washington, D.C. 20231

Sir:

Transmitted herewith is a Response to Restriction Requirement and Amendment in the above-identified application.

☐ Additional fee is required.

The fee has been calculated as shown below:

CLAIMS AS AMENDED						
	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE	ADDITIONAL FEE
TOTAL CLAIMS	100	MINUS	100	0	x $ 9 $18	$ 0.00
INDEP. CLAIMS	1	MINUS	3	0	x $42 $84	$ 0.00
Fee for Multiple Dependent claims $140/$280						--
			TOTAL ADDITIONAL FEE FOR THIS AMENDMENT---			$ 0.00

☐ Verified Statement claiming small entity status is enclosed, if not filed previously.

☐ A check in the amount of $_____ is enclosed.

☐ Charge $___ to Deposit Account No. 06-1205. A duplicate of this sheet is enclosed.

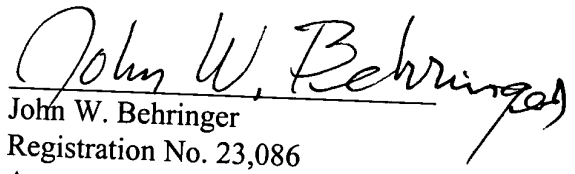
☒ Any prior general authorization to charge an issue fee under 37 CFR 1.18 to Deposit Account No. 06-1205 is hereby revoked. The Commissioner is hereby authorized to charge any additional fees under 37 CFR 1.16 and 1.17 which may be required during the entire pendency of this application, or to credit any overpayment, to Deposit Account No. 06-1205. A duplicate of this paper is enclosed.

☐ A check in the amount of $____ to cover a ___ month extension is enclosed.

☐ A check in the amount of $____ to cover the Information Disclosure Statement fee is enclosed.

☒ Applicants' undersigned attorney may be reached by telephone at (202) 530-1010. All correspondence should be directed to the address listed below.

Respectfully submitted,



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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
GUSTAV GAUDERNACK, ET AL.	)	Examiner: M. Borin
Int'l Appln. No.: PCT/NO99/00143	)	Group Art Unit: 1631
U.S. Appln. No.: 09/674,973	)	
Nat'l Entry Date: November 8, 2000	)	
For: PEPTIDES	)	April 3, 2003

Commissioner for Patents
Washington, D.C. 20231

Response to Restriction Requirement and Amendment

Sir:

Response to Restriction Requirement

In response to the restriction requirement made in the Office Action mailed March 6, 2003, regarding this patent application, Applicants hereby elect the invention of Group I and the amino acid sequence identified as SEQ ID NO. 17, but with traversal.

The Group I claims (Nos. 35-51) are directed to the elected peptide SEQ ID NO. 17, which can be used to induce an immunogenic response against cells that produce aberrant proteins resulting from frameshift mutations associated with cancer. Claim 51 is directed to a pharmaceutical composition containing the elected peptide and a pharmaceutically acceptable carrier or diluent.

The Group IV claims (Nos. 54-56 and 72) are directed to a method of treating a human patient for the prophylaxis or treatment of cancer that involves administering the elected SEQ ID NO. 17 peptide.

Essentially, then, the claims of Group I are directed to a product, and the claims of Group IV are directed to a method of using that product. All of the claims focus on the elected SEQ ID NO. 17 peptide.

As set forth in Paragraph 802.01 of the Manual of Patent Examining Procedure, restriction is proper only if two or more "independent and distinct" inventions are claimed in one application. A product and a process of using the product are not "distinct" unless they are "capable of separate manufacture, use, or sale as claimed." Id. The products and processes to which the Group I and Group IV claims of this application are directed do not meet that test. The claimed process cannot be practiced without using the claimed product.

Moreover, the search and examination of both groups of claims (I and IV) can be made without serious burden, given their common focus on one thing: the SEQ ID NO. 17 peptide. Accordingly, even if it were concluded that independent and distinct inventions are being claimed (which is not the case), restriction still is improper between those two groups. See MPEP §803. ("If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.")

It is also respectfully submitted that it is not mandatory for the Examiner to make a restriction requirement in every possible situation. It is earnestly believed that examination of all of the claims in this application by one Examiner will best ensure that there

will be uniform prosecution quality. Moreover, it is submitted that all of the claims can be searched by one Examiner without undue effort, and that a duplicative search by two Examiners may possibly produce inconsistent results. In addition, it is believed that if one Examiner acts on all the claims of the present application, overall examining time will be less than if two Examiners are involved. Applicants submit that this is especially true with respect to the peptides according to SEQ ID NO. 17 and SEQ ID NO. 428, the SEQ ID NO. 428 peptide being a fragment of the SEQ ID NO. 17 peptide.

Therefore, in the interest of prosecution quality and economy for both the Office and Applicants, it is submitted that withdrawal of the restriction requirement in this application is appropriate. Accordingly, such action is respectfully solicited.

If the Examiner declines to withdraw the restriction requirement in its entirety, Applicants respectfully requests that Groups I and IV be merged and that they be allowed to elect SEQ ID NO. 428 along with SEQ ID NO. 17.

Amendment

Introductory Comments

The present Amendment has been prepared in accordance with the Revised Format established by the U.S. Patent and Trademark Office, as permitted in the Pre-OG Notice entitled "Amendments in a Revised Format Now Permitted."

Please amend the application as follows.